HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No.1949 of 2003

Petitioner: Hridyanand Tiwari, aged about 36 years, son of Shri Nageshwar Tiwari, resident of Namnakala, Ambikapur, Distt. Sarguja(C.G.)

-Versus-

Respondents: State of Chhattisgarh & others,

POST FOR ORDER ON 03.12.2003

Sd/-
L.C.BHADOO
Judge
02.12.2003

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-Versus-

Respondents:

1. State of Chhattisgarh, through Secretary Transport, D.K.S. Bhawan, Mantralaya, Raipur (C.G.).
2. State Transport Appellate Tribunal, 25 College Road, Choubey Colony, Raipur (C.G.).
3. State Transport Authority, E.A.C. Colony, Behind Collectorate, Raipur (C.G.)
4. Shri Prakash Gupta sons of Late Shri Bhuneshwar Prasad Gupta, Resident of village Tapkara, Kunkuri, Distt. Jashpur (C.G.).

Petitioner by Shri Kishore Bhaduri, Advocate.

Respondent No.1/State by Shri Sanjay K. Agarwal Deputy Advocate General.

Respondent No.4 by Shri B. K. Rawat, Advocate.

Interveners by Shri B.P.Gupta, Advocate.

ORDER

(Passed on 31st December, 2003)

By Justice L. C. Bhadoo.

1. By this petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, correctness and validity of the impugned order dated 27.5.2003 passed by the State Transport Authority (for short 'S.T.A.'), Raipur in Case No. 107/2003 whereby the petitioner's application for grant of regular permit from Baikunthpur to Ranchi has been rejected.

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2. The petitioner's case is that he was plying a stage carriage/passenger bus for the last more than two years on a route Baikunthpur to Ranchi on the basis of the temporary permit. On 3rd May, 2000 the petitioner applied for grant of regular permit to the State Transport Authority for this route. The petitioner's allegation are that despite the petitioner's application for regular grant of permit the same was intentionally delayed and the application of the Respondent No.4, was allowed with a biased and malicious attitude towards the petitioner.

3. The petitioner was plying the stage carriage/passenger bus on a temporary permit obtained from the State of Madhya Pradesh on 21.3.2000 between Baikunthpur to Ranchi during the period from 1.5.2000 to 31.8.2000. One Rajendra Singh Chhabda of Chhabda Bus Service Ambikapur lodged his objection regarding temporary permit of the petitioner to the said route before the State Transport Appellate Tribunal (for short 'S.T.A.T.'). Learned tribunal vide order dated 28.6.2000 passed in Revision No.211/2000 stayed the temporary permit of the petitioner on the ground that the said route falls beyond the Reciprocal Agreement. Being aggrieved by that order the petitioner filed a Writ Petition No.1174/2000 before the High Court of Madhya Pradesh, Bench at Gwalior. That petition was allowed, order was quashed and the matter was remanded back to the Tribunal. In compliance of the order passed by the High Court the S.T.A.T. passed the order dt.28.6.2000 allowing the petitioner to ply the bus on temporary permit. As the petitioner's application for grant of regular permit was pending since 03.05.2000 before the S.T.A. for consideration but the authority was not deciding the application therefore the petitioner filed Writ Petition No. 1203/2002 before the High Court of Chhattisgarh in which vide order dt. 25.6.2002 the respondent/authority was directed to decide the matter within a month.

4. On 18.6.2002 the petitioner was directed by the S.T.A. to surrender his temporary permit and stop plying the bus between Baikunthpur to Ranchi. Accordingly the petitioner surrendered

his permit. However, in accordance with the directions given by the High Court of Chhattisgarh in W.P.No. 1203/2002 the S.T.A. vide order dated 19.7.2002 decided the matter, but contrary to the definition of the route as decided by the High Court of Madhya Pradesh in W.P.No. 1174/2000. Being aggrieved by the order dt.19.7.2002 the petitioner preferred Appeal No. 58/2002 before the S.T.A.T. Chhattisgarh, which was decided on 20.1.2003. The S.T.A.T. allowed the appeal of the petitioner and directed the S.T.A. to dispose of the application of the petitioner in accordance with law within a period of one month.

5. During the pendency of the Appeal No. 58/2002 the S.T.A.T. vide letter dt. 8.8.2002 called the records from the office of the S.T.A. in which it was mentioned that next date of hearing is 26.8.2002. But the S.T.A. despite receipt of the said notice/letter knowing fully well that the appeal preferred by the petitioner is pending before the S.T.A.T. in which the petitioner has objected grant of regular permit to the Respondent No.4 for the same route, intentionally passed the order on 26.8.2002 itself and granted the regular permit to the Respondent No.4. However, the S.T.A. curtailed the route by 78 k.m. between Baikunthpur to Ambikapur in gross violation of the directives of the High Court of Madhya Pradesh issued in the petitioner's case, and grant of permit to the Respondent No.4 is also contrary to the reciprocal agreement for the reason that although the S.T.A. while granting permit to the Respondent No.4 curtailed the route between Baikunthpur to Ranchi but allowed the route from Ambikapur to Ranchi which is already a route existing in the Reciprocal Agreement but the said route does not have a quota for the State of Madhya Pradesh or State of Chhattisgarh.

6. The petitioner even though has a right to file appeal before the S.T.A.T. against the order passed by the S.T.A. but he preferred to file this petition for the reason that the S.T.A.T. vide order dt. 20.1.2003 almost directed the respondent S.T.A. to consider the case on facts and law but the S.T.A. in high handedness, in arbitrary manner and abusing the power in utter disregard of the directives of the High Court passed the impugned order therefore

it is violative of the fundamental rights as guaranteed under Article 14 and 19(1)(g) of the Constitution of India.

7. The return has been filed on behalf of the interveners.

8. I have heard Shri Kishore Bhaduri, learned counsel for the petitioner, Shri Sanjay K. Agarwal, learned Deputy Advocate General for the Respondent No.1/State, Shri B. K. Rawat, learned counsel for the Respondent No.4 and Shri B. P. Gupta, learned counsel for the Interveners.

9. The main argument of learned counsel for the petitioner is that the petitioner's application for grant of regular permit has been rejected arbitrarily and the S.T.A. ought to have granted the permit to the petitioner in the light of the judgment of the High Court of Madhya Pradesh, Bench at Gwalior passed in W. P. No. 1174/2000 in the petitioner's case and the order of the S.T.A.T. He further submitted that the permit which was granted to the Respondent No.4 is in fact has been granted from Ambikapur to Ranchi and it has not been granted from Baikunthpur to Ranchi. But as per the reciprocal agreement the regular permit is available from Baikunthpur to Ranchi. He further submitted that since the order of the S.T.A. is arbitrary, illegal which effects the fundamental right of the petitioner and the petitioner has been denied to earn his bread and butter by plying his bus, therefore in spite of having a right of appeal before the S.T.A.T. the petitioner has preferred this petition before High Court which is maintainable. In support of his argument he placed reliance on the decision rendered in the case of Harbanslal Sahnia & another Vs. Indian Oil Corporation Ltd. & others (2002)2 S.C.C. 107.

10. On the other hand learned counsel for the interveners, learned counsel for the Respondent No.4 and learned counsel for the State argued that the petitioner ought to have filed an appeal before the S.T.A.T. as per the provision of Section 89 of the Motor Vehicles Act as alternative equally efficacious remedy was available to the petitioner which he has not availed. Second objection taken by them is that as per the reciprocal agreement between the State of Chhattisgarh and State of Jharkhand only

two permits are available for the State of Chhattisgarh and these two permits have already been granted to the respondent No.4 and Hindustan Transport and no other permit is existing therefore in view of the judgment of the Apex Court reported in A.I.R. 1999 S.C. 3888 Ashwani Kumar and another Vs. Regional Transport Authority, Bikaner and others no permit can be granted to the petitioner. Moreover, the petitioner in this petition has not challenged the permit granted to the Respondent No.4 Shri Prakash Gupta, therefore the petition is liable to be dismissed.

11. Now coming to the question of alternative remedy, it is true that the petitioner has a right to file an appeal before the S.T.A.T. under section 89 of the Motor Vehicles Act, 1988 against the impugned order passed by the S.T.A. but learned counsel argued that since the order of the S.T.A. is illegal, arbitrary and passed in biased manner and prima facie it is clear that the petitioner's bread and butter has been denied on irrelevant and non existent facts therefore the petitioner has approached this Court.

12. In Harbansh Lal's case (Supra) the Hon'ble Apex Court has held that rule of exclusion of writ jurisdiction by availability of an alternative remedy is of discretion and not one of compulsion. In appropriate cases, in spite of the availability of the alternative remedy the High Court may still exercise its writ jurisdiction in at least three contingencies (i) where the writ petition seeks enforcement of any of the fundamental rights (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the light of these principles noted above if we look in the facts of the present case, learned S.T.A. has rejected the petitioner's application on the ground that as per the reciprocal agreement between the State of Chhattisgarh and Jharkhand only two permits are available for grant by the S.T.A. of Chhattisgarh from Baikunthpur to Ranchi and the same are already granted to the Respondent No.4 Shri Prakash Gupta and Hindustan Motors. Now there is no vacancy therefore the permit cannot be granted to the petitioner. Therefore, it cannot be said

that the said order has been passed on an irrelevant or non-existent fact. The petitioner had earlier approached the S.T.A.T. and looking to the facts and circumstances of the case there was nothing to prevent the petitioner to approach the S.T.A.T. against the impugned order. Since other equally efficacious remedy was available to the petitioner, I am of the opinion that in the facts and circumstances of the case the action of the petitioner approaching this Court directly bypassing the S.T.A.T. is unwarranted.

13. Now coming to the question that whether the petitioner is entitled for the grant of permit from Baikunthpur to Ranchi, as has been mentioned in the impugned order that only two permits can be granted by the S.T.A. Chhattisgarh and these two permits are already granted to the Hindustan Motors and Shri Prakash Gupta, therefore on the date of consideration of the petitioner's application no vacancy was existing and therefore, the permit could not have been granted to the petitioner and more over the petitioner has not challenged the permit granted to the Respondent No.4 on any count. Unless, the grant of permit to the Respondent No.4 is challenged and it is quashed, the petitioner is not entitled for the grant of permit as there was no vacancy.

14. The argument of learned counsel for the petitioner that in fact the permit which has been granted to the Respondent No.4 has been granted from Ambikapur to Ranchi and not from Baikunthpur to Ranchi is misconceived for the reason, if we look into the order dated 26.8.2002 by which the permit has been granted to the Respondent No.4 it has been specifically mentioned that as per the agreement between the two States i.e. State of Bihar and State of Madhya Pradesh in the year 1979 the State of Madhya Pradesh was allotted only two permits and in that matter the petitioner was also a party and Madhya Pradesh State Road Transport Corporation (M.P.S.R.T.C.) was also a party and an objection was raised by the M.P.S.R.T.C. that between the route from Baikunthpur to Ranchi, the route from Baikunthpur to Ranchi is nationalized and **in view of the decision in W.P.No.711/93** only M.P.S.R.T.C. was allowed to operate on

nationalized route therefore the permit cannot be granted to the private operator. This aspect has been considered by the learned State Transport Authority and it has been mentioned that it is undisputed that the part of Baikunthpur to Ranchi i.e. from Bainkunthpur to Ambikapur is a nationalized route but neither the M.P.S.R.T.C. is plying any bus nor it is interested in plying the bus. Moreover, the M.P.S.R.T.C. has not applied for the permit. Therefore on account of the technical objections and looking to the inconvenience, the general public cannot be deprived of the transport facility. If permit is granted from Baikunthpur to Ambikapur that will serve the purpose. While granting this permit the time schedule of the bus has been shown from Ranchi to Baikunthpur and from Baikunthpur to Ranchi, therefore in fact the Respondent No.4 has been granted the permit against the one vacancy of the rout Baikunthpur to Ranchi vide order dated 26.8.2002 by the S.T.A. considering all the aspect of the matter. As such on the date of the impugned order there was no vacancy existing on that rout i.e. Baikunthpur to Ranchi. The S.T.A. has rightly rejected the petitioner's application and in this petition the petitioner has not challenged the grant of permit to Shri Prakash Gupta i.e. Respondent No.4.

15. In the result, the petition of the petitioner is devoid of any force which is liable to be dismissed and therefore it is dismissed.

Sd/-
L.C.BHADOO
Judge

Thakur